

REMARKS

Reconsideration of the rejections set forth in the Office Action mailed January 3, 2006, is respectfully requested. Claims 46-49, 54, and 61 have been canceled without prejudice. Claims 50 and 60 have been amended to include the subject matter from dependent claims 54 and 61, respectively. Therefore, no new matter was added with these amendments. Claims 50-51, 55-60, 62, and 65-67 remain pending in this application.

Allowable Subject Matter

Applicants gratefully acknowledge the examiner's indication that claims 54-55, 58-59, 61, and 65-66 are allowable if rewritten in independent form, including all of the limitations of the base claim and any intervening claims.

Art Rejections

Claim 46-51, 56-57, 60, 62, and 67 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Campbell et al. (USP Re. 34,936) in view of Kaldany (USP 5,562,613). Without conceding the propriety of the rejection, claims 46-49 have been canceled without prejudice to their prosecution in a further application. Therefore, the rejections to these claims are now moot.

Applicants have amended claim 50 to include the limitation of dependent claim 54, which was indicated as allowable by the examiner. In particular, Applicants have amended claim 50 to include the step of "*providing a marker element comprising a radiopaque material and adapted to be deployed from the marker element applier.*"

Furthermore, Applicants have amended claim 60 to include the limitation of dependent claim 61, which was indicated as allowable by the examiner. In particular, Applicants have amended specify that the imaging system is "selected from the group consisting of x-ray, ultrasound, and magnetic resonance imaging systems." Therefore, Applicants respectfully request withdrawal of the rejections and reconsideration of the claims as amended.

Information Disclosure Statement

In reviewing the signed Form PTO/SB/08A's returned by the Examiner, Applicants note that the Examiner has not returned the PTO/SB08A mailed on March 31, 2003; July 15, 2004; July 26, 2004; and September 30, 2005 (duplicate copies have been attached for the convenience of the Examiner). Applicants respectfully request that the Examiner review these references and return initialed Forms PTO/SB/08A to the Applicants.

For all the foregoing reasons, Applicants assert the claims are in condition for allowance.
Favorable action on the merits of the claims is therefore earnestly solicited. If any issues remain, please contact Applicant's undersigned representative at (949) 760-9600. The Commissioner is hereby authorized to charge any additional fees that may be required to Deposit Account No. 50-2862.

Respectfully submitted,
O'MELVENY & MYERS LLP

Dated: March 3, 2006

By: Diane K. Wong
Diane K. Wong
Reg. No. 54,550
Attorneys for Applicants

JCK/DKW/cp

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(949) 760-9600



Docket No. END-777

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Seth A. Foerster et al.
Serial No. : 09/954,646 Art Unit: 3764
Filed : September 18, 2001 Examiner: Benjamin Koo
For : METHOD AND DEVICES FOR
DEFINING AND MARKING TISSUE

Assistant Commissioner for Patents
Washington, D.C. 20231

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March 31, 2003
(Date of Deposit)

Patricia A. Deffinger

Name of person signing the Certificate

Patricia A. Deffinger

(Signature)

March 31, 2003

(Date of Signature)

INFORMATION DISCLOSURE STATEMENT

Dear Sir:

Pursuant to 37 C.F.R. §1.56 and in accordance with 37 C.F.R. §§1.97-1.98, information relating to the above-identified application is hereby disclosed. Inclusion of information in this statement is not to be construed as an admission that this information is material as that term is defined in 37 C.F.R. §1.56(b).

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This statement should not be construed as a representation that a search has been made, or that information more material to the examination of the present patent application does not exist.

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This Information Disclosure Statement is being filed after filing of a Request for Continued Examination and prior to receipt of an Office Action responding to the RCE.

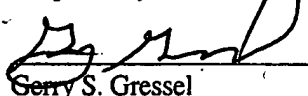
☒ Copies of references listed on the attached PTO Form 1449 were previously cited by or submitted to the Patent and Trademark Office in one or both of prior applications 08/858,389 and 09/776,125 to which this application claims priority, and so copies are not included with this paper.

☒ There are no listed references which are not in the English language.

☐ The relevance of those listed references which are not in the English language is as follows:

Please charge any deficiency or credit any overpayment to Deposit Account No. 10-0750/END-777/GSG. This form is submitted in triplicate.

Respectfully submitted

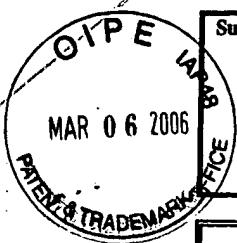


Gerry S. Gressel

Reg. No. 34,342

Attorney for Applicants

Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7003
(513) 337-3535
Dated: March 31, 2003



Substitute for form 1449A/PTO

**INFORMATION DISCLOSURE
STATEMENT BY APPLICANT**
(use as many sheets as necessary)

Sheet 1 of 2

Application Number	09/954,646
Filing Date	September 18, 2001
First Named Inventor	Seth A. Foerster
Group Art Unit	3764
Examiner Name	
Attorney Docket Number	END-777

U.S. PATENT DOCUMENTS

Examiner Initials	Cite No. ¹	U.S. Patent Document		Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document mm-dd-yyyy	Pages, Columns, Lines, where relevant passages or relevant figures appear
		Number	Kind Code ² (if known)			
		4,086,914		Moore, Edwin Bailey	05/78	ALL
		4,402,308		Scott, Walter P.	09/83	ALL
		4,709,703		Lazarow et al.	12/87	ALL
		4,871,094		Fujioka et al.	12/87	ALL
		5,358,474		Kaldany, Antoine	10/94	ALL
		5,487,392		Haaga, John R.	01/96	ALL
		5,526,822		Burbank et al.	06/96	ALL
		5,538,010		Darr et al.	07/96	ALL
		5,562,613		Kaldany, Antoine	10/96	ALL
		5,649,547		Ritchart et al.	07/97	ALL
		6,056,700		Burney et al.	03/99	ALL
		5,002,548		Campbell et al.	03/26/91	ALL
		5,242,457		Alcopov et al.	09/93	ALL
		5,413,584		Schulze	05/95	ALL
		5,496,314		Eggers	03/96	ALL
		5,681,262		Isse	10/97	ALL
		6,228,055	B1	Foerster et al.	05/08/01	ALL

FOREIGN PATENT DOCUMENTS

Examiner Initials	Cite No. ¹	Foreign Patent Document			Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document mm-dd-yyyy	Pages, Columns, Lines, where relevant passages or relevant figures appear	T ⁶
		Office ³	Number ⁴	Kind Code ⁵				
							ALL	

Examiner
Signature

Date
Considered

OTHER PRIOR ART - NON PATENT LITERATURE DOCUMENTS

Examiner's Initials*	Cite No. ¹	Include name of the author (in CAPITOL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published	T ²
		S.S. Kramer et al; "Permanent Radiopaque Marker Technique for the Study of Pharyngeal Swallowing in Dogs"; Dysphagia vol., pp. 163-167 (1987).	
		Homer et al; "The Geographic Cluster of Microcalcifications of the Breast" Surgery, Gynecology & Obstetrics, DCC. (1985).	
		Finan et al; "Intratestinal Radiotherapy for Early Stage Vaginal Cancer"; The Journal of Reproductive Medicine, Vol. 38, No. 3 Mar. 1993	

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

1 Unique citation designation number. 2 See attached Kinds of U.S. Patent Documents. 3 Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). 4 For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. 5 Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST. 16 if possible. 6 Applicant is to place a check mark here if English language Translation is attached.

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Substitute for form 1449A/PTO INFORMATION DISCLOSURE STATEMENT BY APPLICANT (use as many sheets as necessary) Sheet 2 of 2	Application Number	09/954,646
	Filing Date	September 18, 2001
	First Named Inventor	Seth A. Foerester
	Group Art Unit	3764
	Examiner Name	
	Attorney Docket Number	END-777

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		Number	Kind Code ² (if known)			
		6,234,177		Brasch, Thomas	05/01	ALL
		6,258,070		Kaldany, Antoine	07/01	ALL
		6,350,244		Fisher, John S.	02/02	ALL
		4,900,304		Fujioka et al	02/90	ALL
		5,879,357		Heaton et al.	03/99	ALL
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		Office ³	Number ⁴	Kind Code ⁵				
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							ALL	
Examiner Signature						Date Considered		

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41
Docket No. END-777

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Seth A. Forester et al.
Serial No. : 09/954,646 Art Unit:
Filed : September Examiner:
For : METHODS AND DEVICES FOR DEFINING
AND MARKING TISSUE

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Kimberly Moses
(Signature)

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(Date of Signature)

Assistant Commissioner for Patents
Washington, D.C. 20231

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INFORMATION DISCLOSURE STATEMENT

Dear Sir:

Pursuant to 37 C.F.R. §1.56 and in accordance with 37 C.F.R. §§1.97-1.98, information relating to the above-identified application is hereby disclosed. Inclusion of information in this statement is not to be construed as an admission that this information is material as that term is defined in 37 C.F.R. §1.56(b).

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This statement should not be construed as a representation that a search has been made, or that information more material to the examination of the present patent application does not exist.

[] In accordance with §1.97(b), since this Information Disclosure Statement is being filed either within three months of the filing date of the above-identified national

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application (other than a continued prosecution application under §1.53(d)), within three months of the date of entry into the national stage of the above identified application as set forth in §1.491, or before the mailing date of a first Office Action on the merits of the above-identified application, or before the mailing date of a first Office Action after the filing of a request for continued examination under §1.114, no additional fee is required.

☐ In accordance with §1.129(a), this Information Disclosure Statement is being filed in connection with ☐ the first or ☐ second After Final Submission, therefore:

☐ Statement in Accordance with §1.97(e) (attached); or

☐ Please charge Deposit Account No. 10-0750/END-777/GSG the fee of \$180.00 as set forth in §1.17(p).

☒ In accordance with §1.97(c), this Information Disclosure Statement is being filed after the period set forth in §1.97(b) above but before the mailing date of either a Final Action under §1.113 or a Notice of Allowance under §1.311, or an action that otherwise closes prosecution and that it is accompanied by one of:

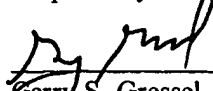
☐ Statement in Accordance with §1.97(e) (attached); or

☒ Please charge Deposit Account No. 10-0750/END-777/GSG the fee of \$180.00 as set forth in §1.17(p).

☒ Copies of references listed on the attached Form PTO-1449 are not included under 37CFR 1.98(d) where the references have been cited in US Patent Application 09/776,125 to which the application claims priority.

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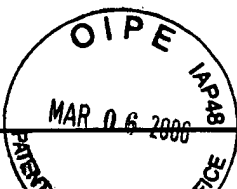
Respectfully submitted,



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Date: July 15, 2004

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SUBMISSION UNDER MRE 609 D

Page 1 of 1

Application Number	09/954,646
Filing Date	September 18, 2001
First Named Inventor	Seth A. Foerster et al.
Group Art Unit	3737
Examiner Name	E. Mantis Mercader
Attorney Docket Number	END -777

U.S. PATENT DOCUMENTS

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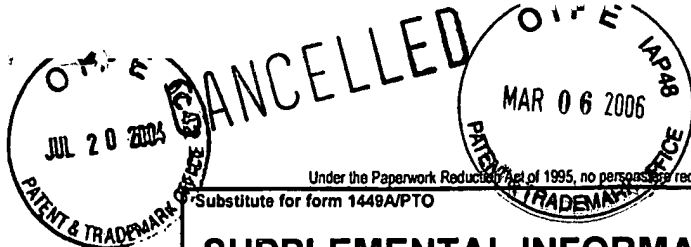
FOREIGN PATENT DOCUMENTS

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OTHER PRIOR ART - NON PATENT LITERATURE DOCUMENTS

[illegible]

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SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT BY APPLICANT

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Sheet 1 of 2

Application Number	09/954,646
Filing Date	September 18, 2001
First Named Inventor	Seth A. Foerster et al.
Group Art Unit	3737
Examiner Name	E. Mantis Mercader
Attorney Docket Number	END -777

U.S. PATENT DOCUMENTS

Examiner Initials	Cite No. ¹	U.S. Patent Document		Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document mm-dd-yyyy	Pages, Columns, Lines, where relevant passages or relevant figures appear
		Number	Kind Code ² (if known)			
		3,592,185		Ephraim, et al.	07-13-1971	ALL
		4,087,791		Lemberger	05-02-1978	ALL
		4,541,438		Parker, et al.	09-17-1985	ALL
		4,735,210		Goldenberg	04-05-1988	ALL
		4,735,796		Gordon	04-05-1988	ALL
		5,041,826		Milheiser	08-20-1991	ALL
		5,101,827		Goldenberg	04-07-1992	ALL
		5,114,703		Wolf, et al.	05-19-1992	ALL
		5,127,916		Spencer, et al.	07-07-1992	ALL
		5,300,120		Knapp, et al.	04-05-1994	ALL
		5,433,751		Christel, et al.	07-18-1995	ALL
		5,437,279		Gray	08-01-1995	ALL
		5,470,308		Edwards, et al.	11-28-1995	ALL
		5,482,040		Martin, Jr.	01-09-1996	ALL
		5,496,536		Wolf	03-05-1996	ALL
		5,514,379		Weissleder, et al.	05-07-1996	ALL
		5,555,885		Chance	09-17-1996	ALL
		5,579,766		Gray	12-03-1996	ALL
		5,582,172		Papisov, et al.	12-10-1996	ALL

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		Office ³	Number ⁴	Kind Code ⁵				
		WO	98/09247	A1	Cothren, et al.	03-05-1998	ALL	
		WO	98/52617	A2	McIntire, et al.	11-26-1998	ALL	

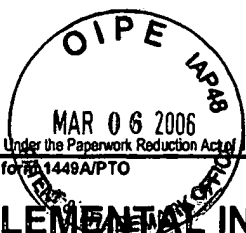
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		4,087,791		Lemberger	05-02-1978	ALL
		4,541,438		Parker, et al.	09-17-1985	ALL
		4,735,210		Goldenberg	04-05-1988	ALL
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		5,041,826		Milheiser	08-20-1991	ALL
		5,101,827		Goldenberg	04-07-1992	ALL
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PTO/SB/08A (08-00)
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		5,595,177		Mena, et al.	01-21-1997	ALL
		5,674,288		Knapp, et al.	10-07-1997	ALL
		5,697,902		Goldenberg	12-16-1997	ALL
		5,716,407		Knapp, et al.	02-10-1998	ALL
		5,725,578		Knapp, et al.	03-10-1998	ALL
		5,732,704		Thurston, et al.	03-31-1998	ALL
		5,776,093		Goldenberg	07-07-1998	ALL
		5,776,094		Goldenberg	07-07-1998	ALL
		5,803,913		Khalkhali, et al.	09-08-1998	ALL
		5,810,806		Ritchart, et al.	09-22-1998	ALL
		5,855,609		Knapp	01-05-1999	ALL
		5,857,463		Thurston, et al.	01-12-1999	ALL
		5,868,778		Gershony, et al.	02-09-1999	ALL
		5,895,640		Khalkhali	04-20-1999	ALL
		5,899,865		Chance	05-04-1999	ALL
		5,913,857		Ritchart, et al.	06-22-1999	ALL
		5,970,986		Bolz, et al.	10-26-1999	ALL
		5,977,431		Knapp, et al.	11-02-1999	ALL

FOREIGN PATENT DOCUMENTS

Examiner Initials	Cite No. ¹	Foreign Patent Document			Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document mm-dd-yyyy	Pages, Columns, Lines, where relevant passages or relevant figures appear	T ⁶
		Office ³	Number ⁴	Kind Code ⁵				
		WO	99/25248	A1	Carroll	05-27-1999		
		WO	99/46284	A2	Rajotte, et al.	09-16-1999		

Examiner Signature	Date Considered
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*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

¹ Unique citation designation number. ² See attached Kinds of U.S. Patent Documents. ³ Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). ⁴ For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. ⁵ Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST. 18 if possible. ⁶ Applicant is to place a check mark here if English language Translation is attached.

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Substitute for form 1449A/PTO INFORMATION DISCLOSURE STATEMENT BY APPLICANT (use as many sheets as necessary) Sheet 1 of 3	Application Number	09/954,646
	Filing Date	September 18, 2001
	First Named Inventor	Seth A. Foerster et al.
	Group Art Unit	3737
	Examiner Name	E. Mantis Mercader
	Attorney Docket Number	END -777

U.S. PATENT DOCUMENTS

Examiner Initials	Cite No. ¹	U.S. Patent Document		Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document mm-dd-yyyy	Pages, Columns, Lines, where relevant passages or relevant figures appear
		Kind Code	Number (if known)			
		Re.	35,391	Brauman	12-03-1996	ALL
			3,194,239	Sullivan	01-16-1963	ALL
			4,298,998	Naficy	11-10-1981	ALL
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Examiner Signature				Date Considered		



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Substitute for form 1449/APTO INFORMATION DISCLOSURE STATEMENT BY APPLICANT (use as many sheets as necessary)	Application Number	09/954,646
	Filing Date	September 18, 2001
	First Named Inventor	Seth A. Foerster et al.
	Group Art Unit	3737
	Examiner Name	E. Mantis Mercader
	Attorney Docket Number	END -777

Sheet 2 of 3

OTHER PRIOR ART - NON PATENT LITERATURE DOCUMENTS			
Examiner's Initials*	Cite No.†	Include name of the author (in CAPITOL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published	T ²
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Substitute for form 1449A/PTO INFORMATION DISCLOSURE STATEMENT BY APPLICANT (use as many sheets as necessary)		Application Number 09/954,646
		Filing Date September 18, 2001
		First Named Inventor Seth A. Foerster et al.
		Group Art Unit 3737
		Examiner Name E. Mantis Mercader
		Attorney Docket Number END -777

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Docket No. END-777

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Seth A. Forester et al.
Serial No. : 09/954,646 Art Unit: 3737
Filed : September 18, 2001 Examiner: Eleni Mercader
For : METHODS AND DEVICES FOR DEFINING
AND MARKING TISSUE

COPY

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Kimberly Moses 7-26-04
Kimberly M. Moses Date

Assistant Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT

Dear Sir:

Pursuant to 37 C.F.R. §1.56 and in accordance with 37 C.F.R. §§1.97-1.98, information relating to the above-identified application is hereby disclosed. Inclusion of information in this statement is not to be construed as an admission that this information is material as that term is defined in 37 C.F.R. §1.56(b).

Applicant(s) reserve(s) the right to establish the patentability of the claimed invention over any of the information provided herewith, and/or to prove that this information may not be prior art, and/or to prove that this information may not be enabling for the teachings purportedly offered.

This statement should not be construed as a representation that a search has been made, or that information more material to the examination of the present patent application does not exist.

[] In accordance with §1.97(b), since this Information Disclosure Statement is being filed either within three months of the filing date of the above-identified national application (other than a continued prosecution application under §1.53(d)), within three months of the date of entry into the national stage of the above identified application as set

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identified application, or before the mailing date of a first Office Action after the filing of a request for continued examination under §1.114, no additional fee is required.


[X] In accordance with §1.97(c), this Information Disclosure Statement is being filed after the period set forth in §1.97(b) above but before the mailing date of either a Final Action under §1.113 or a Notice of Allowance under §1.311, or an action that otherwise closes prosecution and that it is accompanied by one of:

- [] Statement in Accordance with §1.97(e) (attached); or
- [X] Please charge Deposit Account No.10-0750/END-777/GSG the fee of \$180.00 as set forth in §1.17(p).

[x] Copies of references listed on the attached Form PTO-1449 are not included under 37 CFR 1.98(d) where the references have been cited in US Patent Application 09/776,125 to which this application claims priority.

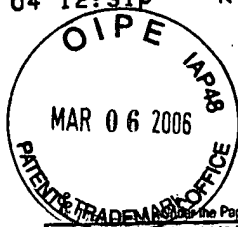
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Respectfully submitted,



Gerry S. Gressel
Reg. No. 34,342
Attorney for Applicants

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New Brunswick, NJ 08933
Phone (513) 337-3535
Date: July 26, 2004



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Application Number	09/954,646
Filing Date	September 18, 2001
First Named Inventor	Foerster, Seth A., et al.
Group Art Unit	3737
Examiner Name	Eleni Mantis Mercader
Attorney Docket Number	END-777

U.S. PATENT DOCUMENTS

Examiner Initials	Cite No. ¹	U.S. Patent Document		Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document mm-dd-yyyy	Pages, Columns, Lines, where relevant passages or relevant figures appear
		Number	Kind Code ² (if known)			
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		5,018,530		Rank, et al.	05-28-1991	ALL

FOREIGN PATENT DOCUMENTS

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		Office ³	Number ⁴	Kind Code ⁵				
		EP	0 894 503	A2	Stinson	08-06-1998	ALL	
		PCT	00/38579	A2	Sirimanne, et al.	12-23-1999	ALL	

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STATEMENT BY APPLICANT**

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Sheet 2 of 5

Application Number	09/954,846
Filing Date	September 18, 2001
First Named Inventor	Foerster, Seth A., et al.
Group Art Unit	3737
Examiner Name	Eleni Mantis Mercader
Attorney Docket Number	END-777

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		Number	Kind Code ² (if known)			
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		5,158,084		Ghiatas	10-27-1992	ALL
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		5,197,482		Rank, et al.	03-30-1993	ALL
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		5,325,857		Nabal, et al.	07-05-1994	ALL
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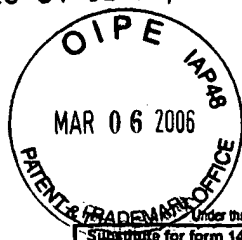
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Sheet 3 of 5

Application Number	09/954,646
Filing Date	September 18, 2001
First Named Inventor	Foerster, Seth A., et al.
Group Art Unit	3737
Examiner Name	Eleni Mantis Mercader
Attorney Docket Number	END-777

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		Number	Kind Code ² (if known)			
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		5,467,780		Nabai, et al.	11-21-1995	ALL
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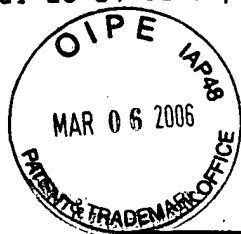
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INFORMATION DISCLOSURE STATEMENT BY APPLICANT

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Sheet 4 of 5

Application Number	09/954,646
Filing Date	September 18, 2001
First Named Inventor	Foerster, Seth A., et al.
Group Art Unit	3737
Examiner Name	Eleni Mantis Mercader
Attorney Docket Number	END-777

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¹ Unique citation designation number. ² See attached Kinds of U.S. Patent Documents. ³ Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). ⁴ For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. ⁵ Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST. 18 if possible. ⁶ Applicant is to place a check mark here if English language Translation is attached.

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Patent
Attorney Docket No. 032,290-109
(formerly END-777)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Foerster

Serial No.: 09/954,646

Filed: September 18, 2001

For: METHODS AND DEVICES FOR
DEFINING AND MARKING TISSUE

Group Art Unit: 3737

Examiner: Eleni M. Mantis Mercader

COPY

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with 37 CFR §§ 1.97 and 1.98, the items identified in this Information Disclosure Statement ("IDS") are brought to the attention of the Office. The items are listed on the attached form PTO-SB/08a and PTO-SB/08b. In accordance with §1.98(d), copies of some or all of the references listed on the attached Form PTO-SB/08a and PTO-SB/08b are not enclosed herewith because they were previously cited by or submitted to the Patent and Trademark Office in one or more of the prior U.S. Applications: U.S. Application No. 08/308,097, filed on September 16, 1994, now abandoned; U.S. Application No. 08/858,389 filed on May 19, 1997, issued as U.S. Patent No. 6,228,055; U.S. Application No. 09/776,125, filed on February 2, 2001; U.S. Application No. 10/213,638, filed August 7, 2002; U.S. Application No. 10/966,551, filed on October 15, 2004; U.S. Application No. 10/734,671, filed December 12, 2003; and U.S. Application No. 10/630,883, filed on July 30, 2003. Copies of the references can be provided at the request of the Examiner.

The items identified in this IDS may or may not be "material" pursuant to 37 CFR § 1.56. The submission thereof by Applicant is not to be construed as an admission that any such patent, publication or other information referred to therein is material or considered to be material (37 CFR

CERTIFICATE OF MAILING (37 C.F.R. §1.8a)

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as First Class Mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

September 30, 2005
Date of Deposit

Cynthia B. Pacheco
Cynthia B. Pacheco

10/05/2005 NBI 669835 1
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§ 1.97(h)), or even qualifies as "prior art" under 35 USC § 102 with respect to this invention unless specifically designated by Applicant as such.

INFORMATION DISCLOSURE STATEMENT FILING PROVISION:

☐ This IDS is believed to be timely in that it is being submitted under 37 CFR § 1.97(b), that is (1) within three months of the filing date of the application, which is not a continued prosecution application filed under § 1.53(d); or (2) within three months of entry of the national stage as set forth in 37 CFR § 1.491; or (3) before the mailing of a first Office action on the merits; or (4) before the mailing of a first Office action after filing a request for continued examination under § 1.114. Thus, no fee is required.

☐ However, if the undersigned is in error in this regard, Applicant respectfully requests that the Office consider this IDS as filed under 37 CFR § 1.97(c), if applicable, and charge the fee due under 37 CFR § 1.17(p) to the deposit account referenced below.

☐ However, if the undersigned is in error in this regard, Applicant respectfully requests that the Office consider this IDS as filed under 37 CFR § 1.97(c), if applicable, and a statement under 37 CFR § 1.97(e) is included below, thus no fee is required.

☒ This IDS is being submitted under 37 CFR § 1.97(c), that is after mailing of a first Office action on the merits, but before a Final Action under 37 CFR § 1.113 or a Notice of Allowance under 37 CFR § 1.311.

☒ The fee due under 37 CFR § 1.17(p) is submitted herewith.

☐ A statement under 37 CFR § 1.97(e) is included below, thus no fee is required. In the event that this IDS is not received before a Final Action or a Notice of Allowance, then Applicant respectfully requests that the Office consider the filing of these papers to be submitted under 37 CFR § 1.97(d) and charge the fee due under 37 CFR § 1.17(p) to the deposit account below.

☐ This IDS is being submitted under 37 CFR § 1.97(d), that is after a Final Action under 37 CFR § 1.113 or a Notice of Allowance under 37 CFR § 1.311, but before payment of the issue fee. A statement under 37 CFR § 1.97(e) is included below. The fee due under 37 CFR § 1.17(p) is submitted herewith.

Statement Under 37 CFR § 1.97(e):

☐ Each item contained in this IDS was first cited in a communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this IDS.

☐ No item contained in this IDS was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing this statement after

making reasonable inquiry, no item of information contained in this IDS was known to any individual designated in 37 CFR § 1.56(c) more than three months prior to the filing of this IDS.

PAYMENT AND/OR AUTHORIZATION TO CHARGE FEES:

- ☐ A check in the amount of \$180.00 is enclosed for the above fee(s).
☒ Please charge \$180.00 to Deposit Account No. **50-2862** for the above fee(s).

The Commissioner is authorized to charge any fees required by the filing of these papers, and to credit any overpayment to O'Melveny and Myers' Deposit Account No. **50-2862**.

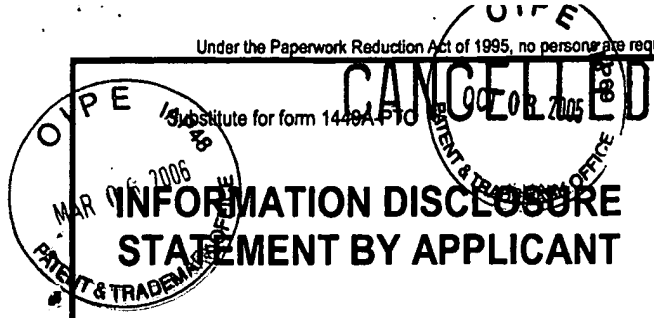
Respectfully submitted,

O'MELVENY & MYERS LLP

Dated: September 30, 2005

By: Diane K. Wong
Diane K. Wong
Reg. No. 54,550
Attorneys for Applicant

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(949) 760-9600



Complete If Known			
Application No.	09/954,646		
Filing Date	9/18/2001		
First Named Inventor	Foerster		
Art Unit	3737		
Examiner Name	Eleni M. Mantis Mercader		
Attorney Docket No.	032,290-109 (formerly END-777)		

Sheet	1	of	2
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INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Use as many sheets as necessary)

U.S. PATENT DOCUMENTS

Examiner Initials	Cite No. ¹	Document No.	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Number-Kind Code ² (if known)			
	1.	US 2,609,347	09/1952	Wilson	
	2.	US 2,653,917	09/1953	Hammon	
	3.	US 2,659,935	11/1953	Hammon	
	4.	US 2,664,366	12/1953	Wilson	
	5.	US 2,664,367	12/1953	Wilson	
	6.	US 2,846,407	08/1958	Wilson	
	7.	US 3,001,522	09/1961	Silverman	
	8.	US 4,103,692	8/1978	Baier	
	9.	US 4,832,686	05/1989	Anderson	
	10.	US 4,970,298	11/1990	Silver	
	11.	US 5,148,813	09/1992	Bucalo	
	12.	US 5,204,382	04/1993	Wallace	
	13.	US 5,207,705	05/1993	Trudell	
	14.	US 5,326,350	07/1994	Li	
	15.	US 5,716,404	02/1988	Vicante	
	16.	US 5,752,974	05/1998	Rhee	
	17.	US 5,941,910	08/1999	Schindler	
	18.	US 6,174,330 B1	1/2001	Stinson	

FOREIGN PATENT DOCUMENTS

Examiner Initials*	Cite No. ¹	Foreign Patent Document	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	† ⁶
		Country Code ³ Number ⁴ Kind Code (if known)				
	19.	DE 0935625	11/1955			
	20.	EP 0255123	02/1988			
	21.	WO 0078228	12/2000			
	22.	WO 9513746	05/1995			

Examiner Signature	Date Considered	
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		Application No.	09/954,646		
		Filing Date	9/18/2001		
		First Named Inventor	Foerster		
		Art Unit	3737		
Examiner Name	Eleni M. Mantis Mercader				
Sheet	2	of	2	Attorney Docket No.	032,290-109 (formerly END-777)

FOREIGN PATENT DOCUMENTS							
Examiner Initials*	Cite No. ¹	Foreign Patent Document		Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	T ²
		Country Code ³	Number ⁴ Kind Code (if known)				
	23.	WO	9810712	03/1998			

NON PATENT LITERATURE DOCUMENTS			
Examiner Initials*	Cite No. ¹	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s) volume-issue number(s), publisher, city and/or country where published	T ²
	24.	CLARKSON, P.: "Sponge Implants for Flat Breasts," Proceedings of the Royal Society of Medicine, Vol. 53 at 880-881 (1960)	
	25.	FOURNIER et al: "Experimental Studies and Preliminary Clinical Trial of Vinorelbine-loaded Polymeric Bioresorbable Implants for the Local Treatment of Solid Tumors", Cancer Research 51, pp. 5384-5391, October 1, 1991	
	26.	PANGMAN, W.J. and WALLACE, R.M.: "The Use of Plastic Prosthesis in Breast Plastic and Other Soft Tissue Surgery," The Western Journal of Surgery, Obstetrics and Gynecology at 508 (August 1955)	
	27.	PARK, KINAM et al.; "Biodegradable Hydrogels for Drug Delivery," Purdue University School of Pharmacy, pp. 2-28	

Examiner Signature	Date Considered	
<p>*Examiner: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. 1 Applicant's unique citation designation number (optional). 2 See Kinds Codes of USPTO Patent Documents at www.uspto.gov or MPEP 901.04. 3 Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). 4 For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. 5 Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. 6 Applicant is to place a check mark here if English language Translation is attached.</p> <p>This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.</p>		
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